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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers)
Long Distance Carriers)

CC Docket No. 94-129

AT&T CORP. PETITION FOR PARTIAL RECONSIDERATION
OR, IN THE ALTERNATIVE, FOR CLARIFICATION

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to the remedy prescribed in Section 258 is simply beside the point; as two Commissioners point out in their separate statements accompanying the decision, the agency is not free to substitute its own policy determination for Congress' judgment concerning the appropriateness of this private enforcement mechanism. The absolution remedy fails for this reason alone.

Even apart from its conflict with Section 258, the absolution remedy should be rescinded in light of the inherently unfair and immensely burdensome set of liability procedures that the Commission has prescribed. The most egregious aspect of this mechanism is the Commission's decision to assign adjudication of the merits of a carrier change dispute to the customer's preferred carrier -- an entity that clearly is not unbiased in the outcome. Moreover, once the preferred carrier has sustained the customer's claim, the Second Report and Order requires the parties to pursue a complex and burdensome process for crediting amounts billed the customer or for which the customer should be absolved. The problems posed by this mechanism will be exacerbated because the absolution remedy creates powerful incentives for customers to report unfounded slamming claims and to delay reporting contested carrier changes in an effort to obtain "free service." For all these reasons, the Commission eliminate the absolution provisions of its decision..

Part II shows that the Commission should also reconsider its decision and adopt additional measures to assure that LEC control of carrier "freeze" procedures do not continue to inhibit robust competition, particularly in newly-opened intraLATA and local markets. The Commission has acknowledged that incumbent LECs have abundant incentives and ability to abuse preferred carrier freezes.

SUMMARY

The Second Report and Order in this proceeding has adopted additional safeguards to protect consumers from unauthorized changes in their selection of a preferred carrier, the practice commonly known as "slamming." AT&T, which is the principal victim of unauthorized changes of customers by unscrupulous carriers, has long been an industry leader in the fight against slamming and has consistently supported Commission efforts to control this abusive conduct. By this Petition, AT&T seeks reconsideration of several features of the Second Report and Order's regime that undermine effective deterrence of slamming.

Most fundamentally, as shown in Part I below, the Second Report and Order prescribes that customers whose carrier selection has been changed without authorization must be absolved of all charges by the unauthorized carrier for the first 30 days following the carrier change. This open-ended absolution remedy (which inexplicably reverses the Commission's determination less than four years ago rejecting that relief) clearly violates Section 258 of the Communications Act. Congress enacted those provisions in 1996 to create an effective means to compensate injured carriers for unauthorized changes and to create incentives for private enforcement of prohibitions against slamming. Under Section 258, the authorized carrier is entitled to receive all sums collected by the unauthorized entity from its customers following a carrier change. Absolution of the customers from these charges eviscerates this Congressionally-mandated remedy and is precluded by the statutory design. The Second Report and Order's conclusion that absolution would somehow be "preferable"

Accordingly, exclusive LEC control of the freeze process and related information is inconsistent with the goal of a competitive marketplace. LECs should thus be required to accept freeze orders and freeze changes submitted directly to them by other carriers on customers' behalf where those orders have been verified by an independent third party; nothing in the Second Report and Order demonstrates that such verification is any less reliable in the carrier freeze context than for purposes of directly-submitted carrier change orders. Automated handling of freeze changes by LECs should also be mandated, to supplement the three-way calling mechanism outside of business hours. Finally, LECs should be required to provide other carriers with lists of frozen carrier selections to ensure that all market competitors have access to these critical data and to facilitate convenient carrier changes by those consumers.

Finally, Part III seeks clarification, or alternatively reconsideration, that the antislamming rules and procedures of the Second Report and Order apply to carrier selections for newly-installed lines, as well as to carrier changes on existing lines. There is no indication in that decision that the Commission intended to exclude new lines from the scope of this protection, and there is an equal need to protect consumers from potential abuses when selecting a preferred carrier for newly-installed services.

ARGUMENT

I. THE COMMISSION SHOULD RESCIND ITS ORDER ABSOLVING SLAMMED CUSTOMERS FROM PAYMENT OF CHARGES.

In its 1995 Report and Order,² the Commission reviewed and rejected proposals by numerous parties that customers who are the victims of unauthorized carrier changes should be absolved of liability for charges by the unauthorized carriers. Instead, the Commission there mandated a "make whole" remedy by requiring the unauthorized carrier to rerate its charges to the level that would have been charged by the authorized carrier. Its decision found that absolution would be inappropriate because "the 'slammed' customer does receive a service, even though the service is being provided by an unauthorized entity."³ Moreover, the Commission noted there that affected customers "expect[] to pay the original rate to the original [carrier] for the service," and that "[e]xcept for the time and inconvenience spent in obtaining the original [carrier], consumers are not injured" by requiring them to pay charges at the authorized carrier's rates.⁴ Customers and carriers alike successfully operated under these prescribed procedures for more than three years following the 1995 Report and Order.

² Policies and rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995)("1995 Report and Order").

³ Id., ¶ 37 (emphasis supplied).

⁴ Id.

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Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R.

§ 1.429, AT&T Corp. ("AT&T") requests the Commission to reconsider, or in the alternative to clarify, certain portions of its Second Report and Order in this docket prescribing rules to control and provide remedies for "slamming," the unauthorized changes in end users selections of a telephone exchange or telephone toll service provider.¹

¹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, released December 23, 1998 ("Second Report and Order"). A summary of the Second Report and Order was published in the Federal Register on February 16, 1999. See 64 Fed. Reg. 7746, as modified 64 Fed. Reg. 9219 (February 16, 1999). Concurrently with its filing of this petition, AT&T is also submitting comments in response to the Commission's Further Notice of Proposed Rulemaking released in that decision.

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The Second Report and Order now abandons these proven successful-procedures and instead requires carriers to provide free service -- regardless of the amount of the bill -- in response to a customer's slamming complaint for the first 30 days after the allegedly unauthorized change.⁵ The Commission should reconsider and promptly rescind this provision of the Second Report and Order. First, as two members of the Commission have publicly acknowledged, the liability scheme established in the Second Report and Order clearly subverts and conflicts with Section 258 of the Communications Act, added by Congress in 1996 to provide redress to authorized carriers for diversion of their customers through slamming and provide meaningful incentives for private enforcement of the Commission's antislamming rules.⁶ And, even apart from its clear-cut inconsistency with statutory requirements, the Second Report and Order's absolution remedy and its associated liability scheme makes no sense as a matter of policy because it prescribes an unworkable, unduly costly and grossly unfair procedure for adjudicating carriers' liability for slamming claims while at the same time creating powerful incentives for unnecessary delay, and even fraudulent conduct, by customers in reporting slamming claims.

⁵ Second Report and Order, ¶ 18. Such absolution applies regardless of the amount of the bill, or even whether that amount had "spiked" suspiciously during the absolution period. Rerating to the authorized carrier's charges will continue only where the customer pays charges to the unauthorized carrier. Id.

⁶ See id., Statement of Commissioner Michael K. Powell Concurring in Part and Dissenting in Part); Dissenting Statement of Commissioner Harold Furchgott-Roth.

A. The Absolution Requirement Violates Section 258 of the Communications Act.

Section 258 of the Communications act, enacted in the Telecommunications Act of 1996, authorizes the Commission to prescribe verification procedures for changes in customers' interLATA, intraLATA and local exchange services. The statute provides in relevant part:

- (b) Liability for Charges -- Any telecommunications carrier that violates the [Commission's prescribed] verification procedures . . . and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe" (emphasis supplied).

Section 258 thus provides authorized carriers, who heretofore have been victimized by slamming with virtual impunity, with a simple and highly effective mechanism to obtain compensation for the economic injury inflicted upon them by unauthorized carrier changes.

The Second Report and Order's procedure absolving customers from payment of charges to an unauthorized carrier eviscerates the statutory scheme prescribed in Section 258(b). The Second Report and Order asserts (§ 19) that absolution is somehow "preferable to using the remedy in [S]ection 258(b) because the slamming carrier is likely to refuse to remit revenues to the unauthorized carrier." The short, and dispositive, answer to this contention is that Congress in mandatory language established a remedy requiring unauthorized carriers to pay over the

proceeds of such transactions to authorized carriers, and the Commission is not authorized to substitute its contrary policy judgment to negate that determination.⁷

Moreover, the Commission's stated policy basis for nullifying the statutory remedy is both unsupported in the record and lacking in reasoned basis. As noted above, even if an unauthorized carrier fails to remit moneys due the authorized provider (and the Second Report and Order makes no attempt to assess the likelihood of such conduct), the latter entity has every economic incentive to pursue action to recover those funds from the unauthorized carrier. The Second Report and Order simply fails to take account of these powerful private enforcement incentives.

Further, the mere speculation that some unauthorized carriers may not remit funds to customers' authorized carriers in accordance with Section 258 requirements would not, in all events, logically justify relieving customers from paying an unauthorized carrier at least an amount equivalent to the charges that they would have paid to their authorized carrier, as provided for in the 1995 Report and Order. Entirely absolving customers from the first 30 days of charges from an unauthorized carrier is clearly unrelated to the unauthorized entities' willingness to pay over the funds to authorized carriers in accordance with Section 258; indeed, absolution obviously will frustrate the ability of those entities to pay over to authorized carriers

⁷ It is likewise clear that Section 258(b)'s provision granting the Commission authority to prescribe implementing procedural rules cannot be read as authority to nullify the substantive requirements of the statute. See 47 U.S.C. § 154(i)(Commission's general rulemaking authority applies only where "not inconsistent with this Act").

the charges such unauthorized carriers would otherwise have received from customers. In sum, the absolution remedy prescribed in the Second Report and Order plainly violates the requirements of Section 258, and should be rescinded.

B. The Complex Mechanism for Administering Liability is
Unworkable and Inequitable.

In addition to its legally unjustifiable absolution remedy, the Second Report and Order establishes a complex, immensely burdensome, and inherently unfair set of procedures and transactions for determining the liability of customers to allegedly unauthorized carriers, for determining intercarrier liability between the authorized and unauthorized service providers, and for collecting and remitting amounts owed between carriers and refunds to customers. The harm inflicted by this convoluted process is further magnified because the absolution remedy prescribed by the Commission creates perverse, and enormously powerful, economic incentives for customers fraudulently to claim that they have been slammed and to unnecessarily delay reporting even legitimate slamming claims.

Specifically, the decision prescribes that, when a customer has alleged an unauthorized carrier change and has been returned to its previously authorized carrier, the latter carrier will determine the customer's liability for service charges from which the customer has been absolved or, if the customer has already paid any such charges, whether those amounts should be paid over to it by the disputed carrier.⁸ The Commission fails to provide any legal basis for assigning this adjudicative role to the

⁸ Second Report and Order, ¶ 42 and proposed 47 C.F.R. §64.1180.

customer's new carrier -- an entity that clear is neither impartial nor unbiased -- and does not even acknowledge the new carrier's inherent conflict of interest in performing such a function.⁹ At minimum, where the customer will be absolved of the disputed carrier's charges, the new service provider has every incentive to sustain the unauthorized change claim so as to build "good will" with its customer.¹⁰ Moreover, where the customer has already made payment to the disputed carrier, the new carrier has every reason to resolve the dispute against the prior service provider and thereby obtain the charges for itself.

The Second Report and Order fails to prescribe any usable standards or criteria that could conceivably mitigate, much less control, these incentives for blatant self-dealing. The decision merely inveighs, without further elaboration, that the authorized carrier "shall conduct a reasonable and neutral investigation" into the customer's claim.¹¹ And, if a disputed carrier contends that the other carrier's

⁹ Nor does the Second Report and Order attempt to provide any legal justification for subjecting the customer's new carrier to the expense administrative burden of adjudicating the transaction between the customer and the disputed carrier.

¹⁰ If the new carrier were instead to conclude that the customer's disputed change had in fact been authorized, it would be required under the Commission's new procedure to first bill the customer for the previously absolved charges, attempt to collect those charges from the customer, and then pay them over to the customer's prior carrier. Even apart from the impact such actions would have on its relationship with the customer, there is no apparent reason why the new carrier would subject itself to the time, trouble and inconvenience of this procedure, for which the Second Report and Order provides no compensation.

¹¹ Second Report and Order, ¶ 42. Notably, the Commission makes no finding (and, given the record, had no basis to find) that, even if they could perform neutrally in making such determinations, carriers generally have the resources and

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investigation or resolution of the claim is "in any way improper or wrong," the only redress Second Report and Order affords is "the option of filing a [S]ection 208 complaint."¹² Given the number of disputed carrier changes that will need to be resolved annually under the Second Report and Order's new procedures, reliance on the Commission's complaint process to assure fair adjudications by carriers is illusory, at best.

Once the customer's previous carrier has determined that a disputed change was unauthorized (which is virtually a foregone conclusion), the Second Report and Order then prescribes a complex crediting process for amounts billed to the customer. Under this scheme, the preferred carrier must first bear the burden and expense of rerating the unauthorized carrier's bill to the customer to its own rates and charges -- a process that under current practice is performed by the carrier that made the unauthorized change.¹³ If the authorized carrier thereafter receives payment of any amounts collected by the unauthorized carrier, any amounts in excess of what would have been charged the end user must be remitted by the authorized carrier to that

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expertise reliably to evaluate practices of other carriers with which they may be unfamiliar.

¹² Id. (footnote omitted).

¹³ The Second Report and Order provides no legal basis for placing this burden on the authorized carrier, nor does it make any findings to support a conclusion that authorized carriers are sufficiently familiar with their competitors' rates and charges to be able to perform the rerating function.

customer. However, if the unauthorized carrier fails to remit sums paid by the customer within 60 days, the authorized carrier must then advise the customer of its inability to collect those charges, leaving the customer to decide whether to pursue relief through the Commission's complaint process.¹⁴

None of the administrative systems required for this mechanism to function (such as electronic interfaces between carriers to transmit necessary data) now exists, and the decision ignores the enormous burden and expense to carriers of implementing these processes. In all events, moreover, this convoluted procedure also imposes uncompensated costs on parties who took no role in the unauthorized change, rewards uncooperative or recalcitrant carriers, and is calculated to increase burdensome administrative litigation that needlessly consumes scarce Commission resources. Such a result cannot be squared with the Commission's goal of protecting consumers from unauthorized carrier changes.

Just as seriously, the Second Report and Order fails adequately to address the fact that the absolution remedy underlying its liability determination mechanism is grossly disproportionate to affected customers' legitimate economic expectations, or that absolution creates perverse, and enormously powerful, economic

¹⁴ The liability determination process is replete with other problems. For example, the Second Report and Order mistakenly assumes that the identity of the disputed and new carriers will always be known to each other; in fact, under the industry-standard Customer Account Records Exchange ("CARE") process, when a customer is returned to a carrier under an optional "switchback" tariff as a result of a customer's complaint to a LEC, the identity of the disputed carrier is not disclosed to the second carrier, nor is the new carrier's identity disclosed to the disputed carrier.

incentives for customers to delay reporting slamming, and even for outright fraud by some customers. As noted above, in 1995 the Commission, after review of a full record compiled in a notice and comment rulemaking, concluded that absolution did not correctly reflect customers' reasonable expectations with respect to payment for their presubscribed telecommunications services. The Second Report and Order does not make (nor could it have made) any contrary finding concerning slammed customers' legitimate expectation that they will be liable for at least the level of charges that would have been assessed by their authorized carrier. Instead, the decision merely makes two observations which do not, individually or taken together, justify absolving customers of these charges.¹⁵

First, the Second Report and Order notes that absolution "is easy to administer" because "consumers [can] simply refuse to pay telephone bills containing slamming charges."¹⁶ But the asserted ease of administering absolution, even if that claim were true -- and as shown above, it is not -- does not explain or justify the Commission's reversal of its 1995 finding that absolution is unwarranted to restore affected customers to the economic status they reasonably anticipated when presubscribing to their preferred carrier.

Second, the Second Report and Order points out as a purported justification for adopting absolution that the alternative of requiring the unauthorized

¹⁵ Where, as here, the Commission adopts a substantive modification of a carrier's legal obligations, it must provide a reasoned explanation for that determination. See AT&T v. FCC, 974 F.2d 1351 (D.C. Cir. 1992).

¹⁶ Second Report and Order, ¶ 20.

carrier to pay over to the authorized carrier the amount that entity would have charged "would result in the authorized carrier being paid for services it never provided."¹⁷ As AT&T has shown above, however, in enacting Section 258 Congress expressly provided that a displaced authorized carrier will be compensated for unauthorized carrier charges out of affected customers' payments to the unauthorized carrier-- despite the fact that the authorized carrier did not actually provide service to those customers. Thus, the Commission's observation concerning the absence of an actual service relationship between the authorized carrier and its slammed customers is likewise no justification for the absolution remedy.¹⁸

The Commission's absolution remedy is all the more unreasonable because it relieves affected customers from liability for all service charges "during the first 30 days after the unauthorized change,"¹⁹ even if the customer may know or have

¹⁷ Id.

¹⁸ The Second Report and Order (§ 18) also states that "consumers deserve some compensation for the inconvenience and confusion they experience from being slammed," but it ignores that the Commission found in the 1995 Report and Order that such inconvenience did not justify any relief beyond rerating their bills. 10 FCC Rcd at 9579 (§ 37). Moreover, although it found that customers "often experience[] great difficulty and inconvenience" to correct unauthorized changes, the Second Report and Order cited no record support for that finding and made no attempt to quantify the economic value on such inconvenience or to compare such a valuation to the costs of adopting an absolution remedy.

¹⁹ See proposed Section 64.1100(d). The Second Report and Order gave no explanation for creating such open-ended exposure on carriers' part, nor did it explain the Commission's failure to consider capping the amount of service charges that customers may incur without obligation after an unauthorized carrier change takes place. At a minimum, to deter fraud the Commission should have prescribed reasonable limits on the amounts that residence and business

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reason to know of the unauthorized change far earlier²⁰. However, because such customers who take immediate steps to revert to their authorized carrier cannot take full advantage of the 30 day absolution period, the Second Report and Order creates a powerful economic incentive for customers to delay reporting an allegedly unauthorized carrier change, simply to maximize the amount of free service they may then obtain from the disputed carrier. Moreover, the absolution mechanism creates equally compelling incentives for some customers to raise unfounded slamming claims simply to obtain a large amount of free service. The Second Report and Order fails to conduct a reasoned analysis of these serious problems' impact on its selection of the absolution remedy.²¹

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customers can be absolved from paying under its decision (e.g., an amount no greater than the subscriber's average prior usage with the preferred carrier)..

²⁰ Due to variations in billing cycles, customers frequently receive bills disclosing a change in their presubscribed carrier well before 30 days following a disputed carrier change. Moreover, customers often can detect that their carrier has been changed, even before receiving a bill from an allegedly unauthorized carrier. For example, customers who place operator services calls on a 0+ basis would receive audible "branding" from the new presubscribed carrier in accordance with Section 226 of the Communications Act and the Commission's rules (47 C.F.R. § 64.703 *et seq.*). Directory assistance calls may also be branded with the name of the new presubscribed carrier. Finally, other calls dialed "1+" may also be branded; for example, AT&T last year introduced deployment of a such a feature on many on such calls placed by its residential subscribers.

²¹ The Second Report and Order does not even acknowledge that absolution could deter consumers from reporting alleged slamming promptly. Although it noted that "most carriers" had pointed out the heightened risk of unfounded slamming claims absolution would create, the decision simply observed that such claims could be refuted where carriers "produce proof of valid verification." *Id.*, ¶ 22.

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In sum, the absolution remedy and related liability determination mechanism adopted in the Second Report and Order is both impermissible as a matter of law and fatally flawed as a matter of policy, and those provisions should be promptly rescinded.

II. THE COMMISSION SHOULD RECONSIDER ITS ORDER TO ASSURE THAT PREFERRED CARRIER FREEZES DO NOT IMPEDE COMPETITION.

In the Second Report and Order, the Commission acknowledged that preferred carrier freezes offer important consumer protection benefits, but that abuse of those freezes also present a serious potential threat to robust competition for interLATA services, as well as for intraLATA toll and local exchange services where competition to the incumbent LECs is just beginning. As the Commission pointed out, in light of the deterrent effect of such freezes on inroads into their markets, "incumbent LECs have incentives to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber's carrier."²² Moreover, the Commission expressly

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But the Commission did not attempt to evaluate the extent to which absolution would stimulate groundless slamming claims or the costs to carriers of responding to such allegations.

²² Second Report and Order, ¶ 116 (also finding that "[p]articularly given the market structure changes contemplated in the 1996 Act, . . . incentives for unreasonable preferred carrier freeze practices exist")(footnote omitted). See also id., ¶ 132 ("we think it is imperative to prevent anticompetitive conduct on the part of . . . carriers that administer preferred carrier freeze programs").

recognized that "preferred carrier freeze mechanisms can essentially frustrate the Commission's statutorily authorized procedures for effectuating carrier changes."²³ The Commission thus concluded that it had both the legal authority and the obligation to adopt rules "to ensure the fair and efficient use of preferred carrier freezes . . . to protect customer choice and, correspondingly, to promote competition."²⁴

Unfortunately, the Second Report and Order fails to implement critical safeguards for the carrier freeze process that were clearly justified both in light of the Commission's policy objectives described above and the underlying record in the proceeding.²⁵ Specifically, although the Commission required LECs to accept three-way calls from customers and submitting carriers, it declined to require LECs to accept subscriber-authorized freeze changes directly from submitting carriers where there has been independent third-party verification of those orders, or to require LECs to provide alternative means, such as answering machines, to process subscribers' calls after normal business hours.²⁶ Moreover, the Commission declined to require LECs to

²³ Id., ¶ 117.

²⁴ Id.

²⁵ In March, 1997, MCI petitioned the Commission to initiate a rulemaking to regulate carrier freezes by LECs. When it initiated the present rulemaking, the Commission incorporated MCI's petition and all responsive pleadings into the record of this proceeding. See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, 12 FCC Rcd 10,674, 10,687-88 (1997).

²⁶ Second Report and Order, ¶ 131.

provide other carriers with lists identifying those subscribers that have applied a carrier freeze to their accounts (but not the identities of those customers' frozen carriers).²⁷

As AT&T shows below, each of these determinations is clearly at odds with the Commission's own stated goal of preventing abuse of the carrier freeze mechanism. In particular, the decision fails adequately to recognize that retaining incumbent LECs' exclusive control over all customer contacts needed to implement or remove freezes is antithetical to the Commission's pro-competitive objectives in this proceeding. Similarly, the Second Report and Order fails to recognize that maintaining the LECs' exclusive access to reliable and complete information about carrier freezes seriously disserves both the goal of a competitive marketplace and the interests of customers in changing carriers conveniently.

A. LECs Should Be Required to Accept Direct Carrier
Submission of Freeze Orders and Changes

The Second Report and Order declines to modify the Commission's rules to allow direct carrier submission of freeze change, even if those orders were first verified by a neutral third party, based on its conclusion (§ 131) that "subscribers would gain no additional protection from the implementation of a preferred carrier freeze" on this basis. The apparent finding concerning the limited value of verification for this purpose directly contradicts the Commission's conclusions elsewhere in the Second Report and Order endorsing the value of third-party verification in the general carrier selection process -- and, in particular, in processing carrier freeze requests.

²⁷ Id., § 133.

Thus, in the same portion of its order in which it denied direct carrier submission of verified freezes and freeze changes, the Commission "extend[ed] our carrier change verification procedures to preferred carrier freeze solicitations" by LECs, and directed LECs that administer such freeze programs to verify customers' requests for such treatment of their accounts.²⁸ The Commission concluded that reliance on these procedures (including verification by an independent third party) would "minimize the risk that unscrupulous carriers might attempt to impose preferred carrier freezes without the consent of subscribers."²⁹

These considerations apply with equal force to carrier freezes and freeze changes submitted directly by to LECs by toll carriers with independent verification of the affected customers' selection of these options. The Second Report and Order provides no reasoned basis for concluding that third party verification provides adequate protection from abuse in the case of freeze orders submitted to a LEC directly by the customer, but not in the case of such orders directly submitted to the LECs by other carriers. Indeed, the Second Report and Order necessarily acknowledges that, prior to establishing a three-way call with the customer and a LEC to implement a freeze order, a carrier submitting a carrier change for a customer with a preferred carrier freeze "would comply with our verification rules for carrier changes,

²⁸ Id., ¶ 125.

²⁹ Id. (footnote omitted).

perhaps by using third party verification³⁰ The decision provides no justification for finding that such verification is adequate to protect customers against the risk of an erroneous (or even intentionally falsified) carrier selection, but is somehow insufficient to protect against the risk of a misstated or unauthorized carrier freeze order or change.

It is no answer that, as the Second Report and Order observes (§ 131), carrier freeze orders and changes have historically involved a direct oral or written communication between the subscriber and the LEC serving that customer. As a threshold matter, because current freeze procedures evolved in the absence of any Commission prescription or affirmative review, these practices cannot be determinative of the issue whether submission of such orders directly from other carriers should be authorized or required by the Commission now.³¹ Moreover, as a recent decision of the Michigan Public Service Commission ("PSC") underscores, direct contact between the customer and a LEC is not necessary to the proper operation of the preferred carrier freeze mechanism.

³⁰ Id., § 129.

³¹ In all events, it blinks reality to assert that direct submission by toll carriers of verified freezes or change orders would pose an unacceptable risk of abuse, while at the same time requiring customers to impose or alter those freezes by directly contacting LECs -- the very parties that the Second Report and Order concluded, with abundant support, have compelling incentives to abuse the freeze mechanism. And it is all the more illogical then to base protection from the LECs' abusive conduct on the very same third party verification method that the Commission elsewhere in its order concludes is an inadequate safeguard against potential abuse by toll carriers when directly submitting such orders to LECs.

Specifically, in August 1996 the PSC had originally ordered Ameritech Michigan to permit customers with "PIC protection" (i.e., carrier freezes) to allow those subscribers to change their choice of service providers as long as those change orders were first verified by the submitting carrier through one of the methods prescribed under federal rules for carrier changes (including independent third party verification).³² Late last year, in adopting rules to implement a new state legislation to ensure that customers are protected against unauthorized carrier changes, the PSC reaffirmed its earlier decision that Michigan LECs should accept carrier change orders submitted by other carrier on behalf of customers when verified using federally prescribed methods for carrier changes, and directed that those orders should be "processed immediately" upon the LECs' receipt of proof such verification was performed.³³

As the PSC's decision illustrates, third party verification of carrier-submitted freeze orders and changes is fully sufficient to address the concerns expressed in the Second Report and Order for protecting customers against abusive practices while preserving the effectiveness of the preferred carrier freeze mechanism

³² See Sprint Communications Co., L.P. v. Ameritech Michigan, Case No. U-11038, 117 P.U.R.4th 429 (1996).

³³ Case No. U-11757, Opinion and Order (Mich. Pub. Serv. Comm'n, September 23, 1998)], pp. 13-14. In so doing, the PSC rejected Ameritech Michigan's contention -- echoing the Second Report and Order -- that this procedure would "make it too easy for competing service providers to circumvent a customers' PIC protection" because it would allow a carrier change to occur "without first requiring direct contact (for the purposes of removing PIC protection) between the customer and Ameritech Michigan." Id., p. 10.

as a protection against unauthorized changes. The Commission should therefore reconsider its decision in this respect, and require LECs to accept freeze orders and changes submitted directly by carriers on customers' behalf when those orders have been processed in accordance with the Commission's requirements for independent third party verification.

B. LECs Should Be Required to Provide Automated Handling
of Freeze Orders and Changes.

Even apart from its improper prohibition against submitting verified orders directly to LECs on customers' behalf, the Second Report and Order unnecessarily limited carriers and customers to using three-way calls with LECs as a means of implementing preferred carrier freezes and change orders. As AT&T showed in its comments on MCI's rulemaking petition and again in this proceeding,³⁴ automated means must also be provided for customers to register these changes directly with LECs without the need for three-way calling. Such additional procedures are necessary if only because a substantial volume of carrier selection telemarketing occurs outside of normal business hours, when the LECs' business offices are closed and three-way calling is thus unavailable.³⁵ Without automated means for customers

³⁴ See AT&T Rulemaking Petition Comments, p. 7; AT&T Reply Comments, p. 15.

³⁵ Reliance on automated means of placing carrier freezes and change orders can also obviate potential disputes about the reliability and effectiveness of LEC three-way calling procedures. For example, the Michigan PSC concluded that, after it had directed Ameritech Michigan to implement three-way calls for carrier selections by "PIC protected" customers, Ameritech Michigan effectively refused to participate in those calls by leaving the submitting carriers and customers on hold for unreasonably long periods of time, or by prematurely hanging up before

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to input freeze change orders, these carrier selections could not be immediately implemented without cumbersome procedures, such as arranging later appointments to place three-way calls, that pose serious inconvenience for both submitting carriers and customers.

Both the Commission's prior and newly-prescribed carrier selection rules provide for "electronic verification" of preferred carrier changes submitted directly customers to LECs, using voice response units or similar mechanisms.³⁶ The Second Report and Order provides no justification or explanation for failing to adopt similar methods for customer submission of freeze requests and freeze changes, as AT&T and other parties had requested. Indeed, the decision entirely failed even to address these requests for relief. The Commission should therefore reconsider the Second Report and Order and prescribe such automated means as an additional method for customers to submit carrier freezes and change orders directly to LECs.

C. LECs Should Be Required to Provide Other Carriers
Identification of Frozen Accounts

The Second Report and Order acknowledges that access to accurate and timely information about a subscriber's carrier freeze status is critical for correctly

(Footnote continued from preceding page)

completion of the transaction. See MCI Telecommunications Corp. v Ameritech Michigan, Case No. U-11150, Opinion and Order (Mich. Pub. Serv. Comm'n, May 11, 1998).

³⁶ See current Section 64.1100(b) (47 C.F.R. § 64.1100(b)); new Section 64.1150(b) (47 C.F.R. § 64.1150(b)).

and promptly effectuating a preferred carrier selection change in accordance with that subscriber's authorization.³⁷ Paradoxically, however, the Second Report and Order declined to require LECs to provide submitting carriers with information identifying subscribers with freezes applicable to their accounts (although not the identity of those subscribers' current carriers), as AT&T and numerous other parties had requested in response to MCI's rulemaking petition. The Commission's only stated rationale for refusing to require LEC provision of these data was that it "expect[s]" that, with the implementation of other provisions in the order regarding carrier freeze solicitations, in the future "more subscribers should know whether or not there is a preferred carrier freeze in place on their carrier selection."³⁸

The Second Report and Order simply ignores the seriously distortive impact on the competitive marketplace of continuing to allow LECs exclusive access to comprehensive and up-to-date information on the identities of customers with carrier freezes. It is undisputed that those data, which are now available only to LECs, confer on those carriers a significant marketing advantage by enabling them to implement changes that would otherwise be rejected due to a freeze. There is also no basis to conclude that other competing carriers can obtain the equivalent of this information; the Second Report and Order provides no factual or analytical basis for

³⁷ Second Report and Order, ¶ 133 (noting "we see benefit to the consumer -- in terms of decreased confusion and inconvenience where carriers would be able to determine whether a freeze is in place before or during an initial contact with a customer")(emphasis supplied).

³⁸ Second Report and Order, ¶ 133 (footnote omitted).

its facile predictive judgment regarding subscribers' future knowledge and awareness of their carrier freeze status. Moreover, the order entirely ignores the fact that substantial numbers of existing customers have been subjected to serious confusion about the scope, and indeed even the continuing applicability, of carrier freezes they may have heretofore requested from their LECs.³⁹

It is no answer to state, as the Second Report and Order (§ 133) does, that submitting carriers can resort to three-way calling with the customer and the LEC "to confirm the presence of a freeze" where customers are unaware of their freeze status, or unsure of scope of their current freeze instructions to the LEC. At a minimum, such an approach imposes unnecessary time and inconvenience upon the subscriber, the submitting carrier and the subscriber's LEC alike. Reliance on this procedure to determine a subscriber's freeze status needlessly increases the volumes of three-way calling that LECs must process, thereby magnifying the difficulty of handling all such calls without undue delay and holding times.⁴⁰ And, as shown above,

³⁹ For example, after the Michigan PSC directed it to take corrective actions to remedy deceptive freeze solicitations, Ameritech Michigan unilaterally announced that it was suspending "PIC protection" for any of its customers. Following the PSC's most recent order, Ameritech again announced that it was unilaterally terminating carrier freeze for Michigan subscribers. In light of this background, Ameritech's customers in that state may well be unable to determine whether their carrier selections are, in fact, still frozen.

⁴⁰ As shown in Part II.B above, excessive holding times on three-way calls have already posed a source of serious contention between submitting carriers and LECs. The Second Report and Order's requirement also to use this process to ascertain the customer's carrier freeze status can only be expected to exacerbate disputes about the timeliness of the LECs' call handling procedures.

three-way calling is unavailable after LEC business offices are closed, when a large volume of carrier selection telemarketing occurs; neither subscribers nor submitting carriers could readily confirm the customers' carrier freeze status at these times using the Commission's prescribed process.

These serious detrimental effects of the Second Report and Order are plainly unnecessary. Significantly, the Commission did not find that providing carrier freeze status information to submitting carriers would pose any burden on LEC. To the contrary, the Second Report and Order expressly stated that the Commission "encourage[s] LECs to consider" making such freeze indicators part of the data exchanged with competing local carriers through operational support systems ("OSS").⁴¹ Accordingly, the Commission should also reconsider this aspect of the Second Report and Order, and require LECs to provide other carriers with information concerning the carrier freeze status of LEC customers.

III. THE COMMISSION SHOULD CLARIFY, OR IN THE ALTERNATIVE RECONSIDER AND HOLD, THAT THE SECOND REPORT AND ORDER'S REQUIREMENTS APPLY BOTH TO NEW AND CHANGED CARRIER SELECTIONS.

Many of the regulations and related procedures prescribed in the Second Report and Order are cast in terms of changes in a subscriber's selection of a

⁴¹ Neither Customer Proprietary Network Information ("CPNI") or Billing Name and Address ("BNA") restrictions preclude LECs from disclosing a customer's freeze status to other carriers, or use of that information by the latter carriers). This conclusion is underscored by the Second Report and Order's statement encouraging voluntary disclosure of such data through OSS systems -- which would be prohibited if CPNI and/or BNA restrictions were applicable to freeze status.

preferred carrier, rather than simply in terms of the selection of such carriers, either as an initial carrier selection or as a change from an existing choice of preferred carrier. For example, the order retitles Subpart K of the Commission's rules to "Changes in Preferred Carrier Service Providers," and in lieu of current Section 64.1100 of the rules prescribes a new section with that number titled "Changes in Subscriber Carrier Selections."

Limiting the application of the Second Report and Order's requirements merely to orders changing an existing carrier selection to another preferred carrier choice would seriously disserve the Commission's objectives in that decision of providing consumer protection and encouraging vigorous competition in both current and emerging telecommunications markets. In our highly mobile society, millions of new subscriber lines are installed annually as consumers move their residences and as business customers relocate or expand their locations.⁴² Residence and business customers are required to make an initial selection of preferred carriers for both interLATA and intraLATA toll services when these newly-installed lines are placed in service.

Nothing in the Second Report and Order even suggests, much less demonstrates, that the Commission affirmatively intended to exclude this enormous

⁴² Moreover, as the Commission is well aware, consumers are ever more rapidly adding to the numbers of lines serving their residences to accommodate personal computers, fax machines, "teen lines" and other applications. See, e.g., Defining Primary Lines, CC Docket No. 97-181, Report and Order and Further Notice of Proposed Rulemaking, FCC 99-28, released March 10, 1999.

body of customers from the scope of its rulings there. Moreover, the potential for LEC abuse in a carrier selection through a transaction directly between a customer and a LEC is just as serious in an initial carrier selection for a newly-ordered presubscribed line as where the customer wishes to change an existing carrier choice. Excluding such new orders from the application of the Second Report and Order would deprive a large class of customers of valuable consumer protection, and create risks to effective competition for these customers' carrier selections. AT&T believes that the Commission intended no such outcomes to result from its Second Report and Order. Accordingly, the Commission should clarify that its decision and implementing regulations apply both to preferred carrier selection changes and to the initial selection of a preferred carrier or, alternatively, should reconsider the Second Report and Order to the extent necessary to apply the decision and rules to both carrier selections.⁴³

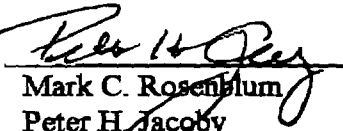
⁴³ AT&T also seeks clarification that the Commission's rule mandating "separate authorization" for preferred carrier changes does not require carriers using a combined check-LOA to give customers the ability to pick and choose which services to switch, yet still allow customers to receive the benefit of the promotional check. To the contrary, under long-standing practice and the Commission's rules it is clear that a single LOA may cover more than one service (e.g., both intraLATA and interLATA toll services), and that the act of cashing a check-LOA serves as adequate authorization for a carrier change for all services covered by the check-LOA. See 47 C.F.R. 1160(d). Such a check-LOA covering more than one service must, of course, have separate statements identifying each service being switched.

CONCLUSION

For the reasons stated above, the Commission should reconsider and modify, or in the alternative clarify, its Second Report and Order in accordance with AT&T's Petition.

Respectfully submitted,

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March 18, 1999

CERTIFICATE OF SERVICE

I, Laura V. Nigro, do hereby certify that on this 18th day of March, 1999, a copy of the foregoing "AT&T Corp. Petition for Partial Reconsideration or, in the Alternative, for Clarification" was served by US first class mail, postage prepaid, on the parties listed below.

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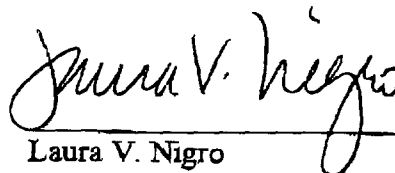
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